IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF OCTOBER,
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 5280 of 1994

Between:

1 Padmati Subba Rao, S/o. Veeraswamy, Hindu,
R/o. Balusumudi, Sagarpeta Behind: D.N.R. College, Bhimavaram.
2 Padamati Satyanarayana, S/o. Pullaiah,
R/o. Balusumudi, Sagarpeta Behind: D.N.R. College, Bhimavaram.
3 Padmati Veera Swami, S/o. Pullaiah,
R/o. Balusumudi, Sagarpeta Behind: D.N.R. College,
Bhimavaram.

..... PETITIONERS.

AND

1 D.N.R. College Association, Bhimavaram, Rep. by its President Bhupathiraju Vijaya Kumara Raju,
R/o. Bhimvaram, West Godavari District.
2 Chairman,
Special Court under A.P. Land Grabbing (Prohibition) Act, at Hyderabad.

.....RESPONDENS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to declare the Sec.8(2) Sec.8(6), Sec.9, Sec.10 of A.P.Land Grabbing (Prohibition) Act, 1982 as arbitrary, illegal, unconstitutional and violation of Art.14 of Constitution of India and to issue Writ of Certiorari calling for the records relating to L.G.C.No.27 of 1992 on the file of the Special Court under A.P.Land Grabbing (Prohibition) Act, 1982 and consequently quash the same as arbitrary, illegal unconstitutional and violation of Art.14 of Constitution of India.

Counsel for the Petitioner:MR.P.RADHAKRISHNA
Counsel for the Respondent No.1: Mr. Mallikharjuna Sastry
Counsel for the Respondent No.2: GP FOR REVENUE

The Court made the following :

The Hon'ble Sri Justice B. Sudershan Reddy

a n d

The Hon'ble Sri Justice K.C. Bhanu

WRIT PETITION No. 5280 OF 1994

O R D E R: (per Sri Justice K.C. Bhanu)

The writ petitioners, who are the respondents in L.G.C. 27 of 1992 on the file of Special Court under A.P. Land Grabbing (Prohibition) Act 1982 (for short, 'the Act'), invoked the extraordinary jurisdiction of this court under Article 226 of the Constitution of India to declare Sections 8(2), 8(6), 9 and 10 of the Act as illegal, arbitrary and unconstitutional and consequently to issue a writ of Certiorari calling for records in L.G.C. 27 of 1992 and quash the same.

The 1st respondent herein filed an application under Section 8(1) of the Act praying the Special Court to eject the petitioners/respondents from the land over an extent of 0-55 cents in R.S.No. 447/15 (old S.No.16) and to deliver the same to the applicant. The brief averments that are necessary for the disposal of the present writ petition may be stated as follows:

An extent of 0-55 cents of land in S.No.447/15

corresponding to old R.S.No. 447/16 along with some other lands was acquired by the Government on the request of W.G.B. College Association for the development of college in the year 1948. The Revenue Divisional Officer, Bhimavaram passed an award dated 30.9.1948. In pursuance of the acquisition proceedings, the Revenue Inspector, Bhimavaram took possession of the land in R.S.No. 447/15 and handed over possession of the same to the applicant-Association, which was renamed as D.N.R. College Association. The 1st respondent-Association constructed a big wall during the year 1963 on the southern side of the petition schedule property for the purpose of using the same by the N.C.C. cadets for rifle shooting. As the N.C.C. Office was shifted to Eluru, the said land was lying vacant. In the year 1985, the petitioners-respondents have unauthorisedly and high-handedly trespassed into the land and encroached into the same by raising temporary huts. The respondents also removed the brick-walls of the shooting range gradually. Therefore the respondents have no right in the said land and they are land grabbers. Hence the application.

The counter affidavit has been filed on behalf of the petitioners-respondents before the Special Court stating that the land admeasuring 0-55 cents in S.No.447/15 is their ancestral property having purchased by the respondents' father's brother under a sale deed dated 3.9.1916 and ever since then the ancestors and thereafter the respondents have been in physical possession and enjoyment of the same and the properties have been mortgaged in favour of Velagapudi Somi Reddy by the ancestors and the said mortgage was redeemed in the year 1955. As per the registered settlement deed dated 1.5.1949, the petitioners-respondents are in

continuous possession and enjoyment of the same. The allegation that in pursuance of the land acquisition proceedings physical possession was taken over by the revenue authorities is denied as factually incorrect and it is stated that the delivery recorded by the land acquisition authorities as per the papers filed by the respondent No.1 – petitioner is only a paper delivery and that no physical delivery of possession was given to the respondent No.1 – applicant. It is further stated that an amount of Rs.146/- was due to the petitioners-respondents as compensation amount and they have filed the available tax receipts and therefore they have perfected the title by adverse possession as they have been in continuous enjoyment of the property right from the year 1916 onwards. Hence the petitioners-respondents prayed to dismiss the petition.

To substantiate the case of the applicant, two witnesses were examined and six documents were marked. On behalf of the petitioners-respondents, 3 witnesses were examined and 6 documents were marked. Exs.X-1 to X-3 were also marked through PW-2.

Upon appreciation of the evidence on record, the Special Court found the respondents therein as land grabbers and allowed the petition directing them to deliver the vacant possession. Questioning the legality and correctness thereof, the present writ petition is filed by the respondents therein.

Learned counsel for the petitioners vehemently contended that in pursuance of the land acquisition proceedings an extent of 0-55 cents of land was not taken delivery by the Land

Acquisition Officer and the physical possession and enjoyment of the disputed extent remained with the ancestors of the petitioners-respondents and thereafter the present writ petitioners are in continuous possession and enjoyment of the property and that they have perfected their title to the petition schedule property by adverse possession. He further contended that the Special Court without considering the evidence of RWs 1 to 3 gave perverse findings and the findings are not based upon the evidence on record. Therefore, he prays to quash the proceedings.

It is well settled that the Certiorari jurisdiction is amenable to correction if the error committed by the Court or Authority on whose judgment the High Court was exercising the jurisdiction should be an error which is self-evident. The law is settled that this court can interfere with the decision of the Subordinate Courts or Tribunals where there is an error manifest and apparent on the face of the proceedings such as (1) when it is based on clear misreading or utter disregard to the provisions of law and (2) a grave injustice or gross failure of justice has occasioned thereby. In a decision of this court in ***Panchumarthi Anuradha v. Avala Nagarani***, it is held by one of us (Justice B. Sudershan Reddy) as follows:

> "As has been held by the higher Courts in India, a writ of Certiorari will issue to correct the errors of jurisdiction as when the inferior Court or Tribunal acts without jurisdiction or in excess of it or fails to exercise it. A writ of Certiorari can also be issued if there is an error of law, which is apparent on the face of the record. Such an error must be patent on the face of the record. Such an error must be manifest on the face of the record".

Learned counsel for the petitioner herein relied upon a decision of the Constitution Bench of Supreme Court in ***Syed Yakoob v. Radhakrishnan*** wherein it is held:

> "It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari".

It is further held therein:

> "If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record".

Bearing the principles laid down by the Constitution Bench in the above decision, now it has to be seen whether there is an error apparent on the face of the record in arriving at the conclusion by the

Special Court under the Land Grabbing Act?

Though the constitutional validity of Sections 8(2), 8(6), 9 and 10 of the Act is challenged as illegal, arbitrary and unconstitutional, in view of the fact that this court in ***Gusani Steels (Pvt.) Ltd., Fatehnagar and others v. Shantha Bai and others*** has already held that Sections 7 and 8 of the Act are neither discriminative nor violative of Article 14 of the Constitution there is no need to again go into the constitutional validity of the abovementioned provisions of the Act.

Though a plea has been taken that right from the year 1916 onwards the ancestors of the writ petitioners had been in continuous possession and enjoyment of the property in question and thereafter the writ petitioners have been in possession and enjoyment of the property, but in the evidence it came on record that writ petitioners occupied the petition schedule land in the year 1970. Furthermore, the petitioners have not filed even a single document to show that for some time their ancestors and thereafter themselves have been in continuous possession and enjoyment of the property. No single document is filed prior to 1988.

A specific plea has been taken that the disputed extent of Ac.0-55 cents was not taken possession by the respondent No.1-Association in pursuance of the award under Award No.1/50 dated 8.1.50 but it is only a paper delivery. The award proceedings No.1/1950 dated 8.1.50 was marked as Ex.X-2. As seen from Ex.X-2 award, an extent of 0-55 cents of land in R.S.No. 445/16 was

acquired. Ex.X-1 is the original plan enclosed to Award No.1/50 dated 8.1.1950 which clearly shows that the respondent No.1-Association was taken advance possession of the property on 29.10.1948. As per Ex.A-3 extract of resettlement Register, the petition schedule property was shown as the property held by the respondent No.1-Association as pattadar. Ex.A-4 is the extract of Adangal for 1401 Fasli regarding S.No.447/15 of Bhimavaram village. As per Ex.X-1 it is clear that the physical possession of the land in S.No.447/16 admeasuring 0-55 cents has been handed over to the college authorities of respondent No.1-Association on 29.10.1948. Therefore, basing on the documentary evidence on record it is established beyond preponderance of probabilities that physical possession of the disputed extent of the petition schedule land was handed over to the respondent No.1-Association in pursuance of the land acquisition proceedings under Ex.X-2 award. As a matter of fact, RW-1 who is the 1st writ petitioner herein admitted in evidence that they have participated in the enquiry before the Land Acquisition Officer and the officials of the Government have taken possession of the petition schedule property already. So, the contention of the learned counsel for the petitioners that the disputed extent of land was not taken possession of by the respondent No.1-Association but it is only a paper delivery is wholly untenable and devoid of merit. The findings of the Special Court are based upon proper appreciation of the evidence on record. Therefore, from the evidence on record, it is established beyond all reasonable doubt that the respondent No.1-college has got right, title and interest and it has been in continuous possession and enjoyment of the property in question. Therefore, the burden shifts to the writ petitioners under Section 10 of the Act to

show that they are not the land grabbers.

To substantiate the plea that they are not the land grabbers, the writ petitioners got examined RWs 1 to 3. According to RW-1, when he occupied the schedule land in the year 1970, there was a dilapidated wall constructed by the petitioner (respondent No.1 herein) college for NCC activities and no firing activities took place in the petition schedule land after 1970. There is no documentary evidence filed to show that prior to 1970 the writ petitioners were in possession of the property. So also, it is not the case of the writ petitioners that they were in continuous possession and enjoyment of the property till 1970. Even according to the evidence of RWs 2 and 3 it is clear that RW-1 and his family members are residing in the petition schedule land since 20 years i.e. by the date of their examination. Therefore, the oral evidence adduced on behalf of the writ petitioners would go to show that they are residing in the petition schedule land for about 20 years. Hence the case of the petitioners is that they have perfected the right in the petition schedule land by adverse possession. The evidence of PWs 2 and 3 has to be disbelieved on the ground that no documents have been filed to show that from the year 1970 onwards the petitioners are in possession and enjoyment of the property. The evidence of RWs 2 and 3 would go to show that the petitioners have constructed houses after the N.C.C. wall was collapsed. But a plea has been taken as if the pucca houses were constructed long back. No specific plea has been taken when they have constructed the houses. Exs.B-1 and B-2 are mortgage deeds prior to acquisition proceedings. Ex.B-3, which is an endorsement showing the discharge of mortgage deed, is also prior to acquisition proceedings. Therefore, they are of no avail to

substantiate the case of the writ petitioners.

Ex.B-4 is the land revenue receipt dated 4.1.1986 showing the payment of tax in respect of the land in S.No.447/16 for the years 1982, 1983, 1984 and 1985. For all these years the tax was paid on 4.1.1986. If really the huts and tile house were constructed, then payment of tax to the land does not arise. So, this document is of no avail to the case of the writ petitioners.

Coming to Ex.B-5, it is the bunch of 5 receipts showing payment of tax by the writ petitioners under the dates 27.3.1988, 30.3.1991, 30.9.1991, 30.9.1991 and 31.3.1982. Insofar as this bunch of receipts, they show about the possession of the petitioners right from the year 1988 onwards. Insofar as the tax receipt dated 31.3.1982 is concerned, the assessment number is shown as 8615 whereas the other assessment numbers in respect of other tax receipts are 1298, 1439 and 1299. These receipts at best show that the petitioners must have been occupied the schedule land after 1988. According to RW-1, they are paying the land revenue even prior to 4.1.1986, but he did not file any land revenue receipt to prove that fact. The application is filed before the Special Court in the year 1992. In order to claim adverse possession, it has to be pleaded and proved by the writ petitioners that they have been in continuous possession and enjoyment of the property to the knowledge of the real owner and therefore they have perfected their right by way of prescription for which they failed to prove the continuous possession of the property for over 12 years. Article 65 of the Schedule to the Limitation Act 1963 prescribes that for possession of immovable property or any interest thereon based on title, the limitation of 12

years begins to run from the date of the defendants' interest becomes adverse to the plaintiff. Adverse possession means a hostile possession, a possession which is expressly or impliedly in denial of title of the true owner. It is settled law that a person who possess his title on adverse possession must show by clear and unequivocal evidence that is his possession hostile to the real owner and amounts to denial of his title to the property claimed. It is also equally settled that in order to claim acquisition of title by adverse possession, the same must be hostile at its inception and the possession in order to be adverse must be continuous, hostile and open to the knowledge of the true owner.

Even if one of the receipts dated 31.3.1982 is taken into consideration as evidencing the possession of the petitioners in respect of the petition schedule property, it is not beyond 12 years. Therefore, the writ petitioners miserably failed to prove that they have perfected their right by adverse possession.

Upon proper appreciation of the evidence on record the Special Court gave the correct findings and the said findings do not suffer from any incurable legal defects. The findings are based upon proper appreciation of the evidence on record. The order under challenge does not suffer from any legal infirmities or factual errors so as to call for interference.

The writ petition is totally devoid of merit and it is liable to be dismissed. Accordingly the writ petition is dismissed. No order as to costs.

B. Sudershan Reddy, J.

K.C. Bhanu, J.

Date: --10—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The President Bhupathiraju Vijaya Kumara Raju, D.N.R. College Association, Bhimavaram,

R/o. Bhimvaram, West Godavari District.
2 Chairman,
Special Court under A.P. Land Grabbing (Prohibition) Act, at Hyderabad.

3. 2CCs to G.P. for Revenue, High Court Buildings, Hyderabad (O.U.T)

2.2CD copies